



W.P(MD)No.31911 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.11.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.31911 of 2025

and

W.M.P(MD)Nos.25099 & 25100 of 2025

Thomas

... Petitioner

Vs.

1.The Deputy Commissioner (Appeal),
Commercial Taxes Building,
Dr.Thangaraju Salai,
Madurai.

2.The Deputy Commercial Tax Officer,
Bodinayakanur,
Theni.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the order passed by the second respondent in Reference.No.ZD3304241955177 dated 25.04.2024 within a time to be fixed by this Court.



W.P(MD)No.31911 of 2025

For Petitioner : Mr.S.Sakthi Siddharth
For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

Heard both sides.

2.The case on hand pertains to the assessment year 2018-2019. The department has passed the impugned order under Section 73 of the TNGST Act, 2017. As per Section 73(2), show cause notice has to be issued 3 months prior to the time limit specified in Sub Section 10. In this case, admittedly the limitation period ends on 31.04.2024. Therefore, show cause notice should have to be issued on or before 31.01.2024. The assessing officer issued show cause notice only on 16.04.2024. The issuance of the show cause notice is not within the time limit specified in the relevant statutory provision.

3.The Hon'ble Delhi High Court in the decision reported in ***TSXSCAN (HC) 2245 (C.H.Robinson Worldwide Freight India Private***



W.P(MD)No.31911 of 2025

Limited Vs Additional Commissioner, CGST-Delhi-South & Others)

had held that the purpose of Section 73(2) of the Act is to provide minimum period of 3 months to the assessee for filing his reply to the show cause notice. 3 months period prescribed in 73(2) of the act is mandatory.

4.The Hon'ble High Court of Andhra Pradesh in the decision reported in ***2025 SCC OnLine AP 652 (Cotton Corporation of India Vs Assistant Commissioner, Vijayawada & Others)*** had also held that the time permit setout under Section 73(2) of the Act is mandatory and any violation of that time period cannot be condoned, and would render the show cause notice otiose. The impugned order is not in conformity with Section 73(2) of the Act and it has to be struck down.

5.The learned Additional Government Pleader on the other hand points out that the petitioner has approached the Court belatedly and therefore relief has to be denied. He also would add that aggrieved by the impugned order, appeal has been filed and therefore he cannot pursue his remedy parallely.



W.P(MD)No.31911 of 2025

WEB COPY

6. Though there is weight in both these contentions, I am not swayed by the same. I had an occasion to deal with the same plea in ***W.P(MD)No.30026 of 2025 (M/s.Cethar Hospital Vs The Principal Secretary to the Government, Department of Health and Family Welfare, Government of Tamil Nadu, Fort St.George, Chennai & Others)***. Vide order dated 03.11.2025, I had held as follows:

10. ... The Hon'ble Supreme Court in the decision reported in (2004) 7 SCC 166 (S.J.S.Business Enterprises (P) Ltd., Vs. State of Bihar and Others) held as follows:-

“14. Assuming that the explanation given by the appellant that the suit had been filed by one of the Directors of the Company without the knowledge of the Director who almost simultaneously approached the High Court under Article 226 is unbelievable (sic), the question still remains whether the filing of the suit can be said to be a fact material to the disposal of the writ petition on merits. We think not. The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article



226 [A.N. Venkateswaran v. Ramchand Sobhraj Wadhvani, AIR 1961 SC 1506] . But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. If, however, a party has already availed of the alternative remedy while invoking the jurisdiction under Article 226, it would not be appropriate for the court to entertain the writ petition. The rule is based on public policy but the motivating factor is the existence of a parallel jurisdiction in another court. But this Court has also held in Chandra Bhan Gosain v. State of Orissa [(1963) 14 STC 766, 918 : (1964) 2 SCR 879] that even when an alternative remedy has been availed of by a party but not pursued that the party could prosecute proceedings under Article 226 for the same relief. This Court has also held that when a party has already moved the High Court under Article 226 and failed to obtain relief and then moved an application under Article 32 before this Court for the same relief, normally the Court will not entertain the application under Article 32. But where in the parallel jurisdiction, the order is not a speaking one or the matter has been disposed of on some other ground, this Court has, in a suitable case, entertained the application under Article



32 [Tilokchand Motichand v. H.B. Munshi, (1969) 1 SCC 110 : AIR 1970 SC 898] . Instead of dismissing the writ petition on the ground that the alternative remedy had been availed of, the Court may call upon the party to elect whether it will proceed with the alternative remedy or with the application under Article 226 [K.S. Rashid and Son v. Income Tax Investigation Commission, AIR 1954 SC 207] . Therefore, the fact that a suit had already been filed by the appellant was not such a fact the suppression of which could have affected the final disposal of the writ petition on merits"

The above case is an authority for the proposition that while the petitioner cannot ride two horses at the same time, the writ Court can give him the option of dismounting from one and ride on the other. In other words, the petitioner can elect to pursue the writ remedy alone...."

7. When the order itself is illegal, the writ Court ought not to non-suit the petitioner on the ground of laches. The order impugned in this writ petition is quashed.



W.P(MD)No.31911 of 2025

8.This Writ Petition is allowed accordingly. The attachment effected on the writ petitioner's bank account shall stand lifted forthwith.

Any amount paid by the petitioner pursuant to the impugned order shall be adjusted against the petitioner's future liabilities. No costs. Consequently, connected miscellaneous petitions are closed.

11.11.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
MGA

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W.P(MD)No.31911 of 2025

G.R.SWAMINATHAN, J.

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W.P(MD)No.31911 of 2025

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